

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**IN RE WORLD TRADE CENTER
DISASTER SITE LITIGATION**

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**RECOMMENDATION OF SPECIAL
MASTERS RE: APPROVING
CONTRACT WITH T.C.D.I.
21 MC 100 (AKH)**

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 5/9/08

We, the Special Masters, in 21 MC 100, have carefully reviewed the attached contract dated May 12, 2008 between Technology Concepts & Design Inc. and the Special Masters for the World Trade Center Litigation acting for the parties to such litigation. The liaison counsel have also carefully reviewed all of the provisions of the contract. The Special Masters and the liaison counsel find it satisfactory and we recommend that the Court approve this contract to create, host and support a data base for organizing the responses to discovery in this litigation. Upon approval of the Court the Special Masters and the parties will execute the contract.

James A. Henderson, Jr.
James A. Henderson, Jr.

Aaron D. Twerski
Aaron D. Twerski

*So ordered
5/9/08
[Signature]*

TECHNOLOGY CONCEPTS & DESIGN, INC.
PROFESSIONAL SERVICES AGREEMENT



Technology Concepts & Design, Inc.
4510 Weybridge Lane
Greensboro, NC 27407
Telephone: (336) 232 5800
Fax: (336) 232 5850

Client Name:

**Special Masters for the World Trade Center
Disaster Site Litigation in the United States
District Court, Southern District of New York,
acting for the Parties to such Litigation,
and without recourse to the Special Masters**

This Professional Services Agreement ("PSA"), dated as of May 12, 2008, is between Technology Concepts & Design, Inc ("TCDI") and the Client identified above (the "Client").

Pursuant to this PSA Client, acting for the parties to that certain litigation pending in the United States District Court, Southern District of New York known as the "World Trade Center Disaster Site Litigation" (the "Litigation"), is engaging TCDI to create and host and support the use of a database to be populated with core discovery responses produced in discovery for purposes of the Litigation and information with respect to such responses. This PSA establishes the understandings of TCDI and the Client with respect to this engagement.

The Schedules that are attached hereto are an integral part of this PSA and are incorporated herein by this reference. Such Schedules consist of the following:

PROJECT ENGAGEMENT TERMS SCHEDULE	describes the terms with respect to the term of the engagement, fees and expenses, billing rates and payment terms and similar matters.
SCHEDULE OF DEFINITIONS	provides definitions of terms used in this PSA.
LITIGATION SUPPORT DATABASE FEATURES AND FUNCTIONAL REQUIREMENTS SCHEDULE	describes, in spreadsheet form, the features and functional requirements of the Database.
SCHEDULE OF SERVICES	describes the professional services to be provided by TCDI.
REQUIREMENTS SCHEDULE	describes Client's responsibilities and any assumptions or requirements on which the Services and Deliverables Schedule and Project Engagement Terms Schedule are based.
SCHEDULE OF ADDITIONAL TERMS OF ENGAGEMENT	contains additional terms governing this PSA.

In the event of any inconsistency among the Schedules attached hereto, the order of precedence shall be in the sequence in which they are set forth above. This PSA may only be amended or modified in writing signed by each of the parties. This PSA shall govern the

relationship between the parties with respect to the subject matter of this PSA, and shall supersede any other negotiations, agreements, proposals and communications (oral or written), and shall prevail over any additional or conflicting terms in any purchase order, invoice, acknowledgment or other similar document not signed by each of the parties.

Technology Concepts & Design, Inc

Client

By: _____	By: _____
Name: <u>William Johnson</u>	Name: <u>Aaron D. Twerski</u>
Title: <u>President</u>	Title: <u>Special Master</u>
Date: _____	Date: _____

	By: _____
	Name: <u>James A. Henderson, Jr.</u>
	Title: <u>Special Master</u>
	Date: _____

Liaison Counsel agree to process the invoices of TCDI for payment by the parties to the Litigation as described in the PSA, and without recourse to the Special Masters. Upon receipt of each invoice from TCDI as described in paragraph 3(c)(1) of Schedule A to this PSA, the undersigned Patton Boggs, LLP agrees to pay TCDI fifty percent (50%) of the appropriate fees due and payable to TCDI pursuant to such invoice on behalf of defendants in the Litigation, and the undersigned Worby, Groner, Edelman & Napoli Bern LLP agrees to pay TCDI fifty percent (50%) of the appropriate fees due and payable to TCDI pursuant to such invoice on behalf of plaintiffs in the Litigation, all without recourse to the Special Masters. Patton Boggs, LLP and Worby, Groner, Edelman & Napoli Bern LLP will obtain from the other parties to the litigation their payment of an appropriate share of such costs. If payment by the other parties is not made to Patton Boggs, LLP and Worby, Groner, Edelman & Napoli Bern LLP in a timely manner, Patton Boggs, LLP and Worby, Groner, Edelman & Napoli Bern LLP will seek the Court's assistance to obtain such payment and resolve any payment-related dispute.

Patton Boggs, LLP

**Worby, Groner, Edelman & Napoli
Bern LLP**

By: _____	By: _____
Name: <u>James E. Tyrell</u>	Name: <u>Paul J. Napoli</u>
Title: _____	Title: _____
Date: _____	Date: _____

Schiff Hardin, LLP

**Sullivan, Papain, Block, McGrath &
Cannavo P.C.**

By:

Name: Beth D. Jacob

Title:

Date:

By:

Name: Andrew J. Carboy

Title:

Date:

PROJECT ENGAGEMENT TERMS SCHEDULE

1. ENGAGEMENT OF TCDI; FEATURES OF THE DATABASE; ACCESS TO THE DATABASE

(a) Client hereby engages TCDI to create, host and support the use of the Database. TCDI acknowledges that the Database must accommodate all core discovery responses produced in compliance with the Core Discovery Order and information with respect to such responses.

(b) TCDI shall cause the Database to have the features and satisfy the functional requirements that are described in the Features Schedule.

(c) TCDI shall cause access to the Database to be available to all persons who are Registered Users from time to time and who comply with the "User Access" provisions of the Features Schedule. TCDI shall advise the Client Project Manager if the number of Registered Users accessing the Database at any point in time exceeds ninety percent (90%) of the number of concurrent users provided for in this PSA.

2. TERM AND TERMINATION

(a) This PSA shall remain in effect until terminated by Client pursuant to subsection 2(b) or by TCDI pursuant to subsection 2(c) or by mutual agreement of TCDI and Client.

(b) Client may terminate this PSA: (i) with or without cause at any time on ninety (90) days prior written notice, (ii) if Client determines that the Litigation has been finally resolved in any manner, upon notice to TCDI effective as of the date of such resolution, (iii) for cause upon thirty (30) days prior notice to TCDI if the Database ceases in any material respect to comply with the requirements that are described in the Features Schedule and TCDI fails to cure the non-compliance within such thirty (30) day period; or (iv) for cause upon thirty (30) days prior notice to TCDI if TCDI breaches any material provision of this PSA applicable to it and fails to cure such breach within thirty (30) days after its receipt of notice of the breach. Notwithstanding clauses (i) and (ii) of this paragraph, Client shall not terminate this PSA without cause effective on a date prior to the first anniversary of the First Actual Use Date.

(c) TCDI may not terminate this PSA except as provided in paragraph 2(a) or upon an order of the Court that is presiding over the Litigation.

(d) Upon termination of this PSA, (i) TCDI shall be entitled to receive all fees for Services rendered and reimbursement for all costs incurred through the effective date of the termination; and (ii) after complying with the provisions of this paragraph, TCDI shall delete the Database in its entirety. Prior to the effectiveness of any termination of this PSA (and prior to deleting the Database), TCDI shall deliver a complete copy of the data in the final version of the Database, in an importable and accessible electronic format, to the Client. All exports shall include the data, search history and folder structures, if any, created during the term of this PSA. The Client shall review all exported material and provide TCDI with written notice that all data is importable and accessible. TCDI's deletion of the Database will not occur until such written notice has been received by TCDI from the Client. Once confirmed, TCDI shall delete all data in the Database from all media (including back-up tapes, hard drives, etc.).

(e) The following terms of this PSA shall survive any termination of the PSA and remain in effect: Paragraph 2(d) and this Paragraph 2(e) of this Schedule A and the provisions of Schedule F.

3. FEES AND COSTS; INVOICING

(a) TCDI's fees for this Project will have four elements: (1) System and Project Startup; (2) Ongoing System Hosting and Maintenance; (3) Requested Project Work; and (4) Additional Resources. This section sets forth TCDI's fees with respect to each of the four elements.

(1) System and Project Startup – \$60,000 (one-time)

The startup phase fee covers all services of TCDI under this PSA through the First Actual Use Date. Such services include but may not be limited to:

- System hardware and software setup and configuration
- Database design and development
- Data migration plan and scripts for data field mapping
- Initial data load defined as the first single batch of up to 5 GBs of plaintiff data and 5 GBs of defense data provided said data is delivered to TCDI in an agreed upon structure and format and is received by TCDI within three weeks of the date on which the Database is ready to be populated with initial data and the data fields to be included in the Database have been agreed to.
- Customization of data intake software
- Customization of data editing software
- Initial user registration and setup
- Design and setup of up to 5 client defined standard user reports to be run as requested. Typical reports include but are not limited to: Last Login Date; Concurrent User Report; Help Desk Contact Report
- Design and setup of a System Audit Report. The report requirements and format will be agreed upon by TCDI and the Client Project Manager and will draw on currently available system capabilities or those reasonably developed with less than 8 hours of development time.
- Initial User training (intake/editing and end user).

(2) Ongoing System Hosting and Maintenance – \$9,500 per month in the year commencing on the First Actual Use Date

The monthly fee for ongoing system maintenance covers all services of TCDI under this PSA pertaining to hosting the Database and causing the TCDI system on which the Database resides to function in a smooth, stable, and secure manner. These areas of service include but may not be limited to:

- Data hosting (up to 100 GBs as measured in total bytes under management)
- Database user access for up to 100 concurrent users and 500 Registered Users
- Ongoing capacity and hardware planning
- Ongoing ClarVergence maintenance
- Network Engineering
- Security engineering
- Disaster recovery (cold recovery)
- User management including adding and deleting users as necessary, and maintenance of user security and role settings
- New user training sessions after startup

- 24/7/365 end user Support Center access.
- Standard user usage reports defined during startup phase
- TCDI will provide upstream internet connectivity consisting of one 100 Megabit carrier grade Ethernet circuit and one 44 Megabit DS-3 Circuit. Both connections are provisioned with different carriers on diverse independent SONET service rings which are terminated at different physical locations. TCDI monitors aggregate bandwidth utilization of its network and statistics on bandwidth utilization are collected every five minutes. Current daily peak Internet bandwidth utilization is below 10% of the aggregate capacity.
- User generated data exports to standard delimited format as defined during startup phase.

(3) Requested Project Work – \$200 per hour in the year commencing on the First Actual Use Date

Requested project work is defined as specific services requested by the Client Project Manager consisting of one or more of the following types of services:

- Data Loading – (preparation, processing, and QC)
- TCDI Project Manager or Project Team member involvement in ongoing status calls and meetings after initial startup phase
- Discussion, coordination, or implementation of feature requests or changes
- Database field additions, changes or updates (after startup) (planning & preparation, processing, and QC) after initial startup phase
- Intake and editing software changes (after startup) (planning, & preparation, processing, and QC)
- Custom report development and execution requiring TCDI Project Manager or Project Team involvement after initial startup phase
- Data exports in custom export formats or structure requiring the intervention of the TCDI Project Manager or Project Team
- Advanced user training after initial startup phase
- Scripts written to execute or automate Client requested processes after initial startup phase.

(4) Fees for Additional Database Size

TCDI will provide Database capacity in excess of 100 GBs, if required, at the following rates during the year commencing on the First Actual Use Date.

GB volume < 100 – Included
 GB volume of 101 to 250 - \$50.00/GB/month
 GB volume > 250 - \$40.00 /GB/month

(5) Text OCR or Extraction

If e-files or documents are received that require OCR or text extraction to become full-text searchable, TCDI will perform the OCR at \$0.04 per page or the text extraction for \$500 per GB. OCR and Text Extraction processing have a \$500 minimum per batch request, and must be provided on a mutually acceptable media. TCDI OCR and text extraction charges do not apply to OCR or extracted text provided by the parties involved provided this text is provided in an agreed upon format.

(6) Fees After the First Year

If the term of this PSA continues after the first anniversary of the First Actual Use Date: (i) the fee for the Ongoing System Hosting and Maintenance Services (the Services described in paragraph (a)(2)) shall be \$9,500/month during the second year following the First Actual Use Date, and TCDI may increase that fee by up to four percent (4%) in each subsequent year during the term of this PSA; and (ii) TCDI may increase the fees described in paragraphs (a)(3) and (a)(4) by up to four percent (4%) per year in each subsequent year (including the second year) during the term of this PSA.

(b) Costs.

TCDI shall be entitled to reimbursement of its actual costs without mark-up for the following expenses that it incurs in the course of providing the Services: (i) travel expenses for travel to project meetings and on-site training (air travel at coach rates; train travel at business class rates); and (ii) charges for export media, materials, and shipping.

(c) Invoicing

- (1)** TCDI shall direct its invoices for Services to Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel, and shall send a copy of each invoice to the Client Project Manager and the Special Masters. Each such invoice shall substantiate the amount of the invoice in reasonable detail. TCDI acknowledges that it is contemplated that TCDI will receive payment of fifty percent (50%) of the fees due and payable to it from plaintiffs in the Litigation and fifty percent (50%) of the fees due and payable to it from defendants in the Litigation.
- (2)** TCDI may submit an invoice for the one-time System and Project Startup fee upon execution of this PSA.
- (3)** Commencing as of the First Actual Use Date, TCDI may submit monthly invoices for Ongoing System Hosting and Maintenance and Requested Project Work. These invoices will be issued on the first day of each calendar month for Ongoing System Hosting and Maintenance to be performed during that month and Requested Project Work performed during the prior month. (TCDI may submit an invoice for Ongoing System Hosting and Maintenance on the First Actual Use Date for the remainder of the calendar month in which the First Actual Use Date occurs, such invoice to be prorated on a daily basis.)
- (4)** Invoices are net 30 days.

DEFINITIONS

In addition to terms defined elsewhere in this PSA, the following terms are used in this PSA with the definitions provided for each:

“Case Management System” or “CMS” means the system operated by TCDI on which the Database will reside. The CMS is further described in paragraph 1(g) of Schedule D.

“Case Management Team” or “CMT” means a committee of persons appointed by the Parties to the Litigation and/or their counsel that is charged with making certain determinations with respect to the Database and the CMS.

“Client Project Manager” means Tim Opsitnick or a replacement Project Manager designated by Client.

“Core Discovery Order” means the Clarifying Order Regulating Discovery, dated November 27, 2007, by U.S. District Court Judge Alvin K. Hellerstein, of the U.S. District Court, Southern District of New York, as such Order may from time to time be modified by further Order of the court.

“Court” means the United States District Court for the Southern District of New York.

“Database” means the database to be populated with core discovery responses produced in discovery for purposes of the Litigation and related information.

“Defendants’ Liaison Counsel” means the counsel for one or more of the defendants in the Litigation that is from time to time designated as Defendants’ Liaison Counsel by the Court presiding over the Litigation.

“Features Schedule” means the Litigation Support Database Features and Functional Requirements Schedule that is attached to this PSA, as such Schedule may be amended from time to time.

“First Actual Use Date” means the date on which data is first loaded into the Database and accessible in the Database.

“Litigation” or “WTCL” means that certain litigation pending in the United States District Court, Southern District of New York known as the “World Trade Center Disaster Site Litigation” (Case No. 21 MC 100).

“Parties to the Litigation” means the parties to the Litigation, as such parties exist from time to time.

“Plaintiffs’ Liaison Counsel” means the counsel for one or more of the plaintiffs in the Litigation that is from time to time designated as Plaintiffs’ Liaison Counsel by the Court presiding over the Litigation.

“Registered Users” means persons designated by Liaison Counsel, Special Masters or by the Court who are enabled in the manner described in the Features Schedule at that point in time to have access to the Database.

“Services” means the services to be provided by TCDI with respect to the Database pursuant to this PSA.

LITIGATION SUPPORT DATABASE FEATURES AND FUNCTIONAL REQUIREMENTS

DATABASE FUNCTIONS AND PARAMETERS	SCHEDULE C AVAILABLE FUNCTIONS BY TCDI ¹
Security	<p>The TCDI CMS security functionality provides the ability to:</p> <ul style="list-style-type: none"> • Assign granular security for functions; • Assign field level (read and/or write control) security; • Assign document level (read and/or write control) security; • Assign box level or record level security; • Assign folder or filtered view level security; • Assign field rights to individual groups (Group Access Rights); • Create View Only group to view specific fields; • Create Coding Group to have permission to, view, and edit specific fields; • Create Reviewer Group to have permission to view and edit specific fields; and • Create pertinent additional groups for different "participants".
	TCDI has the ability to provide Physical Database Security - See Appendix A to this Schedule C.
	TCDI has the ability to provide Network Database Security - See Appendix B to this Schedule C.
Performance Parameters	Database Availability – Database available not less than 99% of the time in each calendar month. This excludes normal mutually agreed upon maintenance windows.

¹ TCDI's available services include, but are not limited to, those listed herein. Unless otherwise stated, the services listed fall under PSA, Schedule A, Section (3)(a)(1) or (2).

	Bandwidth/Connectivity - TCDI will provide Internet connectivity consisting of redundant 45 mb/sec connections with a current average utilization of 13% during peak usage.
Secure User Access	
	Login accounts will be single sign-ins using individual login usernames and passwords.
	Access to TCDI's CMS will be via the Internet only.
	Encrypted SSL connection – See Appendix B to this Schedule C.
	Only Internet Explorer 5.5 or higher are supported to access the TCDI database.
	System access requirements are for Internet Explorer 5.5 or higher only and are operating system neutral.
User Account Options	<p>TCDI centrally handles the management of user accounts including passwords and authentication challenge words used by the User Support Center. The following requirements relative to passwords can and will be accommodated as desired. The requirements for this project will be:</p> <ul style="list-style-type: none"> • Minimum length of password - TCDI will require all passwords to be at least 8 characters in length; • Password complexity – Each password will be required to include one number, and one capital letter;
Administrative	Ability to create accounts - TCDI centrally handles the creation of user accounts. Administrative rights will be determined and provided appropriately based on Client Project Manager and/or CMT desires and security needs. Administrators cannot review queries; users cannot review other users' queries.
	Security maintenance – See Schedule D Section (2)(a)(10) of the PSA.

	TCDI has the ability to increase scalability. See PSA terms for pricing.
	Volume of data (how much data anticipated), Volume of Documents - TCDI's case management systems are built for scaling to significant volumes quickly with no interruption to end users. See PSA terms for pricing.
	Levels of Support - TCDI's standard level of end user support is 24/7/365. See Schedule D Section (2)(a)(15) of the PSA.
	Training Support – TCDI will provide initial user training (intake/editing and end user) as part of system and project startup (Schedule A Section 3(a)(1) of PSA) and new user trainings after startup as part of ongoing system hosting and maintenance (Schedule A Section 3(a)(2) of PSA). Advanced user training will be provided as Requested Project Work (Schedule A Section 3(a)(3) of PSA). Also, see Schedule D Section (2)(a)(14) of PSA.
	Total number of users – Database user access for up to 100 concurrent users and 500 registered users.
	TCDI has the ability to make changes to the database structure. See PSA terms for pricing.
	TCDI will maintain a cold site for disaster recovery. See Schedule D, Section (2)(a)(11) of the PSA.
Auditing	<p>TCDI's CMS has the ability to:</p> <ul style="list-style-type: none"> • Capture who has made any edits to a record and fields; • Capture what information contained in the discovery response was changed; • Capture logins and times; • Save historical responses to each data field (Execution of this requirement can be made available, although the backend process will depend on the data fields involved and additional discussions with the Client Project Manager and/or CMT); and • Generate audit reports to users that display data edited

	<p>by other users or groups of users over certain period of time. See Schedule A, Sections (3) (a) (1), and (3) (a) (3) of the PSA;</p> <ul style="list-style-type: none"> • Queries are not audited; • Capture all transactions or changes and display them in a history field or table.
Data Loading	<p>TCDI has the ability to batch load files or load individual files. All data loading will be conducted by TCDI. TCDI will QC and validate each data load. TCDI will index all data loads to allow for searching. See Schedule A, Sections (3) (a) (1) and (3) (a) (3) or the PSA.</p>
Editing – Data Entry	<p>TCDI has the ability to:</p> <ul style="list-style-type: none"> • Allow editing of records to add field information on individual records; • Let Client Project Manager and/or CMT determine whether users will be allowed to perform editing; if users are allowed to perform editing, TCDI will provide tools needed to facilitate; • Allow batch editing of records on field levels; • Perform indexing/coding; • Set up format fields required, e.g., pull down, open text, date, yes/no,.; and • Allow for the creation and attaching of notes to records with security on notes by group.
Display	<p>TCDI's CMS allows users to:</p> <ul style="list-style-type: none"> • Create templates for reviewers to see only fields of interest; • Have the ability to control the database fields viewed on the summary view screen as a personal preference (based on fields permitted) and set view when return to search and display; and • Have the ability to quickly navigate between related data based on defined relationships.
Search Capabilities	<p>TCDI's CMS search capabilities include the ability to:</p> <ul style="list-style-type: none"> • Search OCR from images and full text from native files (TCDI's standard is to load OCR by document). The parties may give documents to TCDI with the OCR already in agreed upon formats (and there will be no charge by TCDI); • Conduct Full Text (textual content of document) searching;

	<ul style="list-style-type: none"> • Individual field content indexing and searching; • Combine search queries to make complex queries; • Search within results; • Save searches and for others to run a saved search; • Highlight hits of search results; • Provide full text contextual hit display and hit-to-hit navigation; • Search on dates to create Chronologies (at creation must set up with a specific date format (DDMMYYYY OR YYYYMMDD)); • Conduct Boolean searches; • Save document search results in folder; and • Search Notes/Annotation/Redaction and Metadata (Requires Customization, No Charge - TCDI is currently scheduled to provide these features and capabilities as part of a version upgrade scheduled for later this year).
Sort Functionality	The sorting functionality in the TCDI CMS allows the user to sort all records or specific queries by specific fields for organizational purposes prior to reporting, printing, sort by any field, and sort in ascending or descending order.
Reporting	<p>TCDI's CMS reporting functionality provides users the ability to format reports in display or print specific fields, Users will have the ability to print reports, modify fields to include in reports, and save reports from the database in PDF and XLS formats.</p> <p>TCDI has the ability to generate reports to identify discrepancies between parties' data. The capability of the custom reports will be included under Requested Project Work.</p>
Exporting	TCDI's CMS allows for user generated Export reports in PDF and XLS formats. Reports can include all data fields including lookup tables. Development of custom data extraction scripts and TCDI project team run exports may constitute Requested Project Work. Scripts for automated nightly exports can be developed and delivered as Requested Project Work unless agreed upon and executed as part of the startup phase. See Schedule D, Section (2) (a) (7) of the PSA. (These scripts can include calling for exporting data tables, "delta" queries, or custom queries, and can be in CSV text format.) Actual exports using these scripts should not require TCDI project team participation, and, if they do not, would not require Requested Project Work.
	TCDI has the ability to make bulk exports – See Schedule D Section (2)(a)(7) of the PSA.
	As part of Requested Project Work, TCDI has the ability to provide load files for downloading records, files, and images to the most popular trial tools (such as Summation, Concordance, and

	Sanction).
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SCHEDULE OF SERVICES

1. OVERVIEW OF SERVICES AND THE TCDI PLATFORM

(a) TCDI will serve as the case management database hosting and application advisor for the World Trade Center Disaster Site Litigation (WTCL). As such, TCDI will work closely with the Client, the Court, the Client Project Manager, and others designated by the Client Project Manager to design and maintain the smooth functioning of the Case Management System ("CMS") to be accessed by persons on for all sides of the Litigation who are authorized to have such access in the manner described in this PSA.

(b) This project is to be conducted in compliance with the Core Discovery Order and the Features Schedule.

(c) Schedules and processes for data and record intake will be established as part of a project plan but is expected to occur in waves over months of time until data for an estimated 10,000 plaintiffs is complete. The TCDI CMS will support the integration of core discovery responses and data relating to them, as well as the relational linking between them as available through the standard capabilities of the database structure and the ClarVergence Case Management system.

(d) TCDI will provide appropriate tools and processes for the intake and editing of core discovery responses and related records to meet the volumes, formats, search needs, auditing, and overall system security as outlined in the requirements presented. Audit trails will be recorded thereby allowing for the tracking of any changes to the data. The format for change audit reporting will be determined by the Client Project Manager in accordance with standard TCDI system capabilities and defined during the startup phase. Additional custom audit formats and capabilities can be provided after startup as Requested Project Work.

(e) Access to the data in the system will be provided to defense, plaintiffs, and the Court through secure web connectivity using TCDI's proprietary product ClarVergence®. Security associated with viewing and editing data will be outlined by the Client Project Manager through group definitions. Various levels of security can be defined down to the field level within the database.

(f) If the Litigation evolves or moves into additional phases, TCDI will add fields and or collections to the Database to be used for tracking of pertinent information.

(g) TCDI will provide the Services using the TCDI CMS. The TCDI CMS will consist of dedicated hardware, software licenses, internet connectivity, network design, network security services, and ClarVergence implementation. The majority of applications make use of the ClarVergence Software Suite. Livelink Collections Server (formerly BASISPlus) Database Management Software, from Open Text, Inc., will be used as the underlying database management engine. ClarVergence Based Applications will consist of the following:

Data/File Intake and Editing (Usage based on system and user need)

- Web-Form data collection tool (e.g. CVIntake).
- Document Scanning Applications.
- Document Coding Application, CVEdit, through VPN access over the Internet.
- ClarVergence coding and editing templates used by users with editing rights.

End User

- CMS ClarVergence Website and Interface – providing access to data collections defined by the Client Project Manager, and the full range of features and functionality of ClarVergence for case management.

2. ONGOING SYSTEM HOSTING AND MAINTENANCE SERVICES

(a) These Services will consist of all services required to support and maintain the Database and the CMS and all related software and hardware components. These Services will include all routine system administration tasks and maintenance that are necessary to provide uninterrupted access to system users, including, without limiting the generality of the foregoing:

- (1) **Database Access** – TCDI will provide capability to register up to 500 persons as Registered Users and provide access to the Database for up to 100 concurrent users. If additional concurrent user seats are needed they can be added in increments of 50 concurrent users with a corresponding \$500/month increase in the monthly hosting and maintenance fee. TCDI will provide the capability to allocate the designation of persons as Registered Users between the plaintiffs in the Litigation and the defendants in the Litigation as specified by the Client Project Manager from time to time. If the Client Project Manager, the Special Masters or any of the Parties to the Litigation or their counsel, believes that such person's access to the Database is being inhibited because the actual number of concurrent users is restricted by the concurrent user limit then in effect, TCDI will work with the Client Project Manager, Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel to identify a solution to eliminate or alleviate the restriction.
- (2) **Data/File Intake and Editing** – Support of data intake and editing for this project may be performed using multiple methods pending decisions of the Client Project Manager. TCDI will work with the Client Project Manager to define workflow processes, and coding standards to ensure clean and consistent data entry and database content. TCDI will provide appropriate applications and service support to the intake options under use.
- (3) **Hosting & System Engineering** – TCDI will provide facilities and engineering support for the setup, operation, and maintenance of all servers required for the operation of the CMS and the hosting of the Database. Included in these servers are database servers, image servers (as required), web servers, application servers, and security authentication (optional) servers. Support for these servers includes, but is not limited to:

- Hardware setup
- Operating system installation and maintenance
- System patch applications
- Layered software installation
- Physical, network, application, and data-level security controls
- Nightly data and system backups and offsite data storage

Servers are hosted in TCDI's full-service, secure data center facility, featuring redundant power with UPS and generator backups.

- (4) **Capacity and Hardware Planning** – TCDI will review system performance on a continual basis and monitor hardware technologies for improvements and system capacity planning. On a bi-annual basis, TCDI will develop, propose and implement hardware upgrades as needed for the upcoming calendar year.
- (5) **Current Data Integration/Migration** – TCDI will work with the Client Project Manager to analyze and determine the best methods for the migration of currently existing data during the system setup phase. TCDI will propose a detailed data migration plan and will provide all necessary technical support for the migration, maintenance of existing data collections and user training.
- (6) **ClarVergence Maintenance and Development** – TCDI shall provide for ongoing software modifications, updates, bug fixes, and other related support for the ClarVergence software suite to ensure its uninterrupted operation with industry standard hardware, operating systems, and browser versions. This includes both stand-alone (CVEdit, etc.) and web-based software.

Currently, software is updated on an annual major release and semi-annual minor release schedule. TCDI will work with the Client Project Manager to determine which features/enhancements should be included in any particular ClarVergence update to the CMS.

Any and all costs associated with any software modification made by TCDI or any new release of TCDI software that was not requested by the Client or the Client Project Manager will be absorbed by TCDI. TCDI also will absorb all costs associated with user training, implementation, and consulting relating to any such modification or release.

- (7) **Database Support** – TCDI will support the Database, including the following:
- Field creation, deletion, or indexing changes
 - Changes to limit user access based on privilege/confidentiality concerns
 - User generated data exports in standard delimited data formats such that the data is importable and accessible by Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel will be defined during startup. Custom export formats or automated data export pushes can be developed and delivered as Requested Project Work unless agreed upon and executed as part of the startup phase.
 - Data validation procedures
 - Image loading, cross-referencing, and error checking
- (8) **Applications Design and Development** – TCDI will provide programming and developmental support for applications needed in the running of the CMS. These may include one-time data management programs, data migration scripts, and other such software as needs or requests arises.

- (9) **Network Engineering** – The CMS site will be connected to public and private networks. An analysis of data editing and file loading requirements will be made to determine the communications connectivity needs between TCDI and the data/file intake site. Should intake and coding volumes rise to the level requiring point-to-point connectivity, TCDI will provide this connectivity as a pass-through expense. TCDI will provide networking services to plan, design, implement, and document the network. TCDI will work with the Client Project Manager to define and implement requirements for network or off-loaded/remote batch printing capabilities which are optional and priced independent of this PSA.
- (10) **Security Engineering** – TCDI will maintain a highly secure processing environment for the CMS. This includes, but is not limited to, multiple firewalls, active penetration testing, and intrusion detection. TCDI will maintain an active program of industry security watches for software deficiencies in the CMS software base and maintain an active security patch program.
- (11) **Disaster Recovery** – TCDI will maintain in place “cold site recovery” disaster recovery/business continuity arrangements. The TCDI data centers’ infrastructure is designed to be fault tolerant with redundant networks, UPS supported power supply, generator backed utility power, separate environmentally controlled server rooms, and smoke detection/fire suppression systems.

This facility is staffed with TCDI personnel only. Third party involvement with client data and equipment is limited to the pickup and delivery of recovery media, all of which is encrypted for off site storage. Client information such as: Site configuration; hardware inventory; software configuration; network diagrams and addresses; applications configuration; backup schedules and media locations; detailed recovery plans and procedures, will be documented in a Business Continuity document created for the Client and will also be maintained in a secure Configuration Management data base.

Cold site recovery provides minimal redundancy and requires system setup and configuration with data restored from backup tape following a disaster. TCDI will maintain cold site recovery procedures to enable processing at the cold site to be up and running within five – ten business days following a disaster necessitating use of the cold site.

- (12) **Database Engineering** – TCDI will provide all database engineering services for the CMS databases, including, but not limited to, database design, database implementation, and database maintenance (including, but not limited to, index restructures, data dump/reloads, and performance monitoring).
- (13) **User Management and Reporting** – TCDI will provide all services needed to additional users with access to the Database, register those users to the appropriate services and setup user permissions, passwords, and challenge questions used during Support Center calls. TCDI will work to develop user usage reports as required.

- (14) **User Training** – TCDI will provide data input and editing training for appropriate members of the CMT, as well as end user training of ClarVergence used in the CMS as part of the system setup phase. TCDI will work with the Client Project Manager to determine the right mix of onsite and web-conference training to meet the needs of the project and users on an ongoing basis. After setup, ongoing training can be arranged as needed through the TCDI Project Manager.
- (15) **24/7 Support Center** - TCDI will provide a fully manned help and end-user support center for the purposes of providing ongoing user support in the areas of login, connectivity, and basic end user features and functionality on a 24/7/365 basis. The center will be physically manned between 7:00am and 10:00pm ET, Monday through Friday. Calls after hours will be routed to Support Center Staff on call and answered as received. Calls to the support center are tracked by user and reported monthly.
- (16) **Standard Operations** - Day-to-day operations of the project will be under the technical direction of the TCDI Project Manager. The TCDI Project Manager will work in coordination with Client Project Manager to ensure the smooth technical functioning of the CMS. The TCDI Project Manager is also the liaison coordinating work requests from the Client Project Manager with other TCDI Project Team members in various functional areas.

3. **SYSTEM AND PROJECT STARTUP SERVICES**

(a) These Services will consist of all services required to initially establish the Database and prepare the Database for actual use, including, without limiting the generality of the foregoing:

- (1) System hardware and software setup and configuration
- (2) Database design and development
- (3) Data migration plan and scripts for data field mapping
- (4) Customization of data intake software
- (5) Customization of data editing software
- (6) Initial user registration and setup
- (7) Initial user training (intake/editing and end user).

4. **PROJECT MANAGERS**

The names and contact information for the initial TCDI and Client Project Managers are as follows:

Technology Concepts & Design, Inc

On Behalf of Client

Name: Ned Adams

Name: Tim Opsitnick

Email: N_adams@tcdi.com

Email: tmo@jurinnov.com

Phone: (336) 232-5823

Phone: (216) 664-1100

Firm: Technology Concepts & Design, Inc. Firm: Jurinnov Ltd.

If either TCDI or Client changes its Project Manager, it shall notify the other party to this PSA of the change.

REQUIREMENTS SCHEDULE

This PSA is based upon the following requirements, assumptions and responsibilities:

- Client will maintain an appointment of a Client Project Manager in effect. (The initial Client Project Manager is identified on the Services Schedule.) The Client Project Manager will act as the primary contact for TCDI and will have decision-making authority regarding day-to-day management of the project. Client will promptly notify TCDI of any change in the identity of the Client Project Manager.
- Any changes that the Client may wish to make to this PSA shall be reviewed by the Client and TCDI to assess the cost and timing impacts of those changes, and must be approved by the Client and TCDI via a TCDI Change Work Authorization (CWA) executed by both parties. Depending on the extent and complexity of the requested change, TCDI may charge Client for the effort required to analyze a requested change. In such instances, TCDI will notify Client in writing of the estimated charges for such analysis. Client must notify TCDI in writing to proceed with such analysis.

TERMS OF ENGAGEMENT

1. Independent Contractor; Taxes. TCDI is an independent contractor. Nothing in this PSA shall be construed to create an employment relationship between the parties to this PSA, or between any person engaged by TCDI and the Client, whether for tax or any other purpose. Neither party to this PSA shall have the right to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party. Any applicable taxes applicable specifically to the rendering of the Services under this Agreement (such taxes exclude, without limiting the generality of the foregoing, taxes imposed on TCDI's earnings generally) will be subject to the provisions of this PSA with respect to Expenses.

2. Rights to Database and TCDI Intellectual Property and Hardware. TCDI expressly understands and acknowledges that TCDI shall have no rights whatsoever with respect to the data from time to time included in the Database. TCDI shall retain ownership of its intellectual property, including the TCDI software, and all system hardware, and TCDI may use and provide all or a portion of the same in the course of this engagement subject to the terms of this agreement.

3. Warranties, Liabilities and Indemnification.

A. TCDI warrants that appropriately trained and qualified personnel, using professional skill and diligence, will perform the Services. This warranty is subject to TCDI receiving written notice of the specific portion(s) of the work that Client claims does not conform to the foregoing warranty within thirty (30) days of the date on which the specific portion(s) of the work were completed. Client's sole remedies, and TCDI's sole obligation in the event of a breach of the foregoing warranty shall be to either reperform the nonconforming portion(s) of the work, or to refund the Fees and Expenses paid by the Client to TCDI for the nonconforming portion(s) of the work. EXCEPT FOR THE FOREGOING SENTENCE, TCDI DOES NOT MAKE ANY GUARANTY, WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO QUALITY, PERFORMANCE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO ANY OF THE SERVICES.

B. TCDI shall defend any claim, suit or proceeding, and pay any settlement amounts or damages awarded by a court of final jurisdiction, against Client or any Party to the Litigation or Registered User (each, an "Indemnitee") arising out of claims by third parties that the Services or the CMS infringes any

United States copyright or patent. The foregoing indemnification obligation (i) shall only apply to the Services and the CMS in the form finally made available to Client by TCDI pursuant to this PSA and for which Client has paid all Project Fees and Expenses; and (ii) shall not apply to any claim of infringement based on any modification of the CMS or the combination, operation or use of the CMS with materials not supplied by TCDI. In the event of a claim of infringement, TCDI shall have the option, at its expense (i) to procure for the Indemnitee the right to continue using the CMS, (ii) to replace the infringing element of the CMS with a non-infringing product substantially similar in features and functionality, or (iii) to modify the CMS to make it non-infringing without materially affecting features or functionality. This Section 3.B. constitutes the entire and exclusive obligation of TCDI with respect to any infringement of any intellectual property right or rights by the Services or the CMS.

C. A party seeking indemnification shall (i) promptly notify the indemnifying party in writing of the claim, suit or proceeding for which indemnification is sought, (ii) permit the indemnifying party to control, and reasonably cooperate with the indemnifying party (at the indemnifying party's expense) in, the defense or settlement of the claim, suit or proceeding, and (iii) have the right to provide for its separate defense at its own expense.

D. Circumstances may arise where, because of a default on TCDI's part or other liability, Client is entitled to recover damages from TCDI. In each such instance, regardless of the basis on which Client is entitled to claim damages from TCDI (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), TCDI is liable only for: (i) payments referred to in Section 3(B) above, (ii) the amount of any other actual direct damage or loss, up to the greater of \$250,000 or the amount of Fees and Expenses actually paid to TCDI under the PSA. This limit is the maximum for which TCDI is responsible.

E. Under no circumstances shall TCDI be liable for any of the following: (i) third party claims against Client for losses (other than those under Section 3(B) above), (ii) special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if TCDI is informed of their possibility, or (iii) any claim that arose more than two (2) years prior to the institution of suit thereon.

4. Confidentiality.

A. For purposes of this Section 4, "Client Confidential Information" shall mean and include all data delivered

in any form for incorporation in the Database or otherwise provided to TCDI pursuant to this PSA.

B. TCDI shall not disclose Client Confidential Information to any person other than TCDI's employees and subcontractors performing Services under this PSA. TCDI shall use the same degree of care as it uses to protect its own most confidential information with respect to its employees, but no less than a reasonable degree of care, to maintain the Client Confidential Information in confidence. The foregoing obligations shall not apply to any information that (i) is publicly known at the time of its disclosure, (ii) is lawfully received by the receiving party from a third party not under an obligation of confidentiality to the disclosing party, (iii) is published or otherwise made known to the public by the disclosing party, or (iv) was generated independently by the receiving party. The provisions of this Section 4 shall not limit any of the obligations of TCDI as set forth in Section 2.

C. TCDI may make public the existence of the relationship established hereunder. This disclosure shall remain general in nature and include details only as publicly known or as approved with written Client permission.

5. Insurance. During the term of this PSA, TCDI agrees to maintain the following insurance coverage: (i) Commercial General Liability Insurance in the amount of at least \$2,000,000.00, (ii) Workers' Compensation Insurance with statutory limits, (iii) Employer's Liability Insurance in the amount of \$5,000,000.00, (iv) Automobile Liability Insurance in the amount of at least \$1,000,000.00 and (v) Errors and Omissions Insurance in the amount \$5,000,000.00.

6. Export Controls. Client shall not directly or indirectly transfer or export any Deliverable in violation of, and shall be solely responsible for complying with, applicable United States export controls, procedures and regulations.

7. Governing Law; Jurisdiction. This PSA shall be governed by the laws of the State of New York, without reference to it conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this PSA. In any action, dispute or controversy arising, either directly or indirectly, under or in connection with this PSA, the parties to this PSA hereby consent and submit to the exclusive jurisdiction of the Court that is presiding over the Litigation.

8. General. This PSA cannot be modified or supplemented except in writing signed by TCDI and Client, and cannot be assigned by either TCDI or Client without the prior written consent of the other.

The invalidity or unenforceability of one or more provisions of this PSA shall not affect the validity or enforceability of any of the other provisions, and this PSA shall be construed in all respects as if such invalid or unenforceable provisions were omitted.